

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

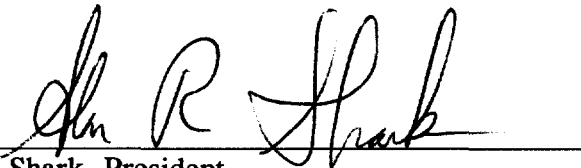
To: The Commission

REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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January 25, 1999

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.^{1/} AMTA supports the Commission's proposal to establish "safe harbor" percentages that the agency believes reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. The Association also endorses the FCC's recognition that it should distinguish between classes of Specialized Mobile Radio ("SMR") service providers for this purpose, with the further refinements suggested below.

I. INTRODUCTION

1. AMTA is a nationwide, nonprofit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. Because all of AMTA's members provide commercial telecommunications services, whether as interconnected Commercial Mobile Radio Service ("CMRS") or non-interconnected Private Mobile Radio Service ("PMRS") operators, they all have been determined by the FCC to be "telecommunications carriers" pursuant to Section 254(d) of the Communications Act of 1934, as amended ("Act"), and, therefore, subject to the universal service payment obligation imposed by that provision if they are engaged in the provision of interstate telecommunications services.^{2/} Accordingly, all AMTA members that

^{1/} 47 C.F.R. § 1.415; Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 98-278 (rel. Oct. 26, 1998) ("Further Notice").

^{2/} 47 U.S.C. § 254(d).

provide any interconnection with the Public Switched Network ("PSN"), no matter how limited, as well as non-interconnected members whose radio systems provide coverage across a state line, even if for dispatch communications exclusively, are required to contribute to the federal universal service support mechanism.

2. In light of the significance of this new obligation to the Association's membership and the difficulties wireless carriers encountered in attempting to classify revenue, often for this purpose only, as interstate versus intrastate, AMTA participated in the *ex parte* meetings held by the Commission's Wireless Telecommunications and Common Carrier Bureaus. The meetings were intended to explore methods for addressing that allocation problem without imposing on carriers costly, burdensome record-keeping requirements attributable exclusively to their universal service support obligation. The Association subsequently conducted a survey of its membership and provided the results thereof to the Commission in letter form. That survey, which was cited extensively in the Further Notice, reported that, with the exception of Nextel Communications, Inc.'s ("Nextel") iDEN system, SMR operators generate only low levels of interstate traffic.^{3/}

3. Based on the data included in the AMTA survey and on documentation provided in universal service Worksheets, the Commission has proposed to adopt permanently its interim safe harbor percentage of one percent of total revenues derived from the provision of interstate service for what the Further Notice described as "analog" SMR providers. The Further Notice also questions whether it should further subdivide licensee categories to reflect variations based

^{3/} Further Notice at ¶¶ 21-2.

on area of the country served or other distinguishing features.^{4/} It further queries whether it should abandon its interstate/intrastate revenue methodology for wireless carriers in favor of a contribution based on voice grade access lines or their equivalents^{5/}

4. AMTA urges the Commission to replace its current "good faith estimate" with the safe harbor percentages proposed for SMR operators, as modified below, but to permit licensees to use actual revenue data, at their election but without requiring a waiver, recognizing that such non-safe harbor percentages could be subject to further scrutiny.

II. THE INTERIM SAFE HARBOR APPROACH SHOULD BE MADE PERMANENT

5. AMTA has described in detail in earlier stages of this proceeding the difficulties encountered by wireless providers, particularly small, primarily dispatch operators, in making any rational assessment of their interstate versus intrastate revenue percentages. It has explained that most SMR systems never had a reason to allocate revenues on that basis, have no mechanism in place or reasonably available to do so, and, in the case of dispatch service, have no ability to track the location of customer dispatch units as they move around in the system's coverage area.

6. The Association's assertions were confirmed in its survey. Numerous operators, in addition to providing the factual information requested, expressed great uncertainty in trying to determine what would constitute a good faith estimate of their revenue breakdown, profound frustration in attempting to make such estimates from the data available to them, and deep concern about the ramifications if their efforts were deemed inadequate. The Commission has already

^{4/} Id. at ¶ 24.

^{5/} Id. at ¶ 26.

addressed these problems, in large measure, by adopting its \$10,000.00 *de minimis* exemption from the universal service support requirement.^{6/} Most of the Association's members are able to determine with relative ease that they would not meet the *de minimis* payment obligation under any revenue percentage allocation. AMTA has supported that provision and assumes it will be retained, irrespective of the decisions adopted herein.

7. AMTA urges the Commission to adopt permanently the one percent safe harbor percentage that has been approved on an interim basis for "analog" SMR operators. However, the Association recommends that the FCC revisit the distinction it has drawn between SMR operator categories to reflect more accurately the delineation among types of systems. In the Further Notice, the FCC notes that it intends the term "cellular and broadband PCS providers" to include "digital SMR providers, such as NEXTEL." ^{7/} It further explains:

Digital SMR service, or "wide-area" SMR service, essentially operates more like a cellular provider than an SMR provider. Digital SMR service "offers consumers dispatch capabilities over much broader geographic areas, along with a unique combination of fully integrated services," such as cellular and broadband PCS service.^{8/}

8. AMTA agrees that there are fundamental, functional distinctions between the iDEN systems currently operated by both Nextel and Southern Communications, Inc., and the more traditional systems operated by other SMR licensees. However, the difference is not simply that

^{6/} Fourth Order on Reconsideration, CC Docket No. 96-45, 8 FCC Rcd 5318 (1997).

^{7/} Further Notice at n. 23.

^{8/} Id

iDEN employs digital technology while most SMR systems still use analog technology; it is a difference in system complexity, design, features and market orientation.

9. The telecommunications world is embarked already on a migration from analog to digital. Some wireless industry segments, like PCS and cellular, are doing so aggressively. The iDEN system was designed in a digital mode, and many systems, even the smaller ones operated by some of AMTA's members, will begin to employ digital techniques or convert entirely to digital in the future, perhaps the near term future. However, this conversion will not necessarily mean a modification in their system design or functionality.

10. Therefore, AMTA recommends that the Commission replace its analog/digital delineation in this context to conform to the "covered carrier" definition already adopted in the number portability proceeding.^{2/} That definition accurately describes other wireless systems that have the functional capability of competing with broadband cellular and PCS systems, and with wireline providers, in the two-way, real-time voice market. That capability comes not simply from adopting digital technology, but from deploying a system with in-network switching capability that incorporates seamless call hand-off and channel reuse. The Association urges the FCC to adopt that same covered carrier definition to distinguish between SMR providers for purposes of both its interim and permanent universal service safe harbor provisions.

11. The Association also has considered the FCC's proposals to further subdivide licensee categories in establishing universal service obligations or to replace the revenue allocation

^{2/} Second Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, FCC 98-275 (rel. Oct. 20, 1998) at ¶ 52. The Personal Communications Industry Association, Inc. has recommended the same approach in its comments in this proceeding.

test with a per line or line equivalent charge. AMTA recommends against both approaches. The former has the potential for enormous complexity, particularly as systems expand or modify their geographic areas in response to marketplace acquisitions and reconfigurations. The latter also raises significant questions of comparability in terms of classifying lines that may prove to be more troublesome than the original good faith estimate test. AMTA believes that the more prudent approach is the one already adopted on an interim basis: the establishment of safe harbor revenue percentages, with the option of relying instead on available system data without requiring a waiver to do so.

III. CONCLUSION

12. For the reasons described, AMTA urges the FCC to adopt permanent safe harbor revenue percentages for wireless universal service funding purposes as described in the Further Notice and as modified in the instant Reply Comments.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this January 25, 1999, caused to be hand delivered a copy of the foregoing Reply Comments to the following:

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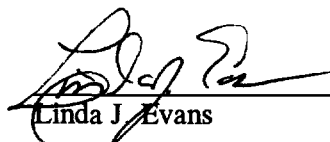
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